

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 159 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KARAMSHIBHAI CHELABHAI BHARWAD

Versus

STATE OF GUJARAT

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Appearance:

MR UI VYAS for Petitioner

MR LR PUJARI, APP for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 11/04/97

ORAL JUDGEMENT

1. The petitioner, the externee under the impugned order dated 8/8/1996 (Annexure-C) passed by the respondent no.2, has preferred this petition challenging the said order as well as the appellate order dated 10/12/1996 (Annexure-A) passed by the respondent no.1 on number of grounds, inter-alia, on the ground that the allegations made against the petitioner are hopelessly

vague and they give no idea whatsoever to the petitioner as to which nefarious activities alleged to have been committed in respect of which area or locality and in respect of which period so that the petitioner could have given effective reply to the same.

2. A copy of the show cause notice has been placed at Annexure-B. On a reference to the said notice u/S. 59 of the Bombay Police Act, 1951 it clearly appears as under :-

The first allegation refers to head strong and nefarious nature of the petitioner. The second allegation refers about the petitioner being inhabit of committing the offence under the Indian Penal Code. The third allegation refers to the petitioner keeping with him deadly weapons like Rampuri knife and sticks and by entering into quarrels on some small matters he is threatening the passers by and the agriculturists of life and causing hurt to them. The fourth allegation refers to where the petitioner is residing for alleging that taking advantage of the relatives residing in the nearby villages he is in the habit of getting the work done. The fifth allegation refers to the petitioner giving threats of taking life by beating in public. The sixth allegation refers to leading cattle to trespass upon the fields of agriculturists and creating inhuman terror on people. The seventh allegation refers to the petitioner disturbing public peace and creating atmosphere of fear and terror in the whole of the area. The eighth allegation refers to the petitioner's involvement in the offences u/Ss. 107 and 110 of the Criminal Procedure Code and then a table is set out for showing the offences stated to have been registered against the petitioner in 1989, 1990, 1992 and 1993. They are in all 9 in number.

3. It is to be noted here that there is no registered offence of the year 1994, 1995 and 1996 set out in the show cause notice. It might also be noted that none of the allegations speaks about any period, muchless the period during 1994, 1995 and 1996.

4. In the background of the aforesaid allegations it has been submitted that a mere look at the allegations set out in the show cause notice, it would indicate that the same can be described as nothing but vague from the stand point of period as well as from the stand point of area. It has been submitted that these infirmities should be treated as fatal infirmities as no reasonable opportunity to show cause against the proposed externment on such allegations could be said to have been afforded to the petitioner.

5. No affidavit-in-reply to this petition has been filed. But Mr. L.R. Pujari, learned A.P.P. for the respondents submitted that the table set out in the show cause notice would indicate the particulars of the offences. He, however, fairly conceded that there are no offences registered or otherwise for the period between 1994 and 1996 set out in the show cause notice.

6. In the background of what is stated above, the decisions contained in the case of Ranjitsing v. Vinay Vyas reported in 27 (1) 1986 G.L.R. 478 and Kathi Harsur v. State of Gujarat reported in 27(1) 1986 G.L.R. 682 relied upon by Mr. Uday Vyas, learned advocate for the petitioner, will in my opinion, squarely apply to the facts of the present case. The Division Bench of this Court has in the first case clearly observed in similar circumstances as under :-

"But if the grounds are inoperative in law on account of vagueness, the entire proceedings emanating from them would fall through. Mr. Mehta next contended that at least two specific instances are mentioned at the end of the grounds in the show cause notices wherein two criminal cases are mentioned. This is no doubt true. However, nothing is indicated in the grounds themselves that these cases pertained to particular allegation mentioned in the list of allegations from Nos. 1 to 8 in the show cause notice. Merely because two criminal cases have been filed against the petitioner in Amirgadh Police Station, it cannot be held that these recitals gave sufficient indication to the petitioner that the concerned alleged activities as listed at Nos. 1 to 8 in the show cause notice were committed by the petitioner during a particular period and in a given particular locality."

In my opinion, the above observations would clearly apply to the allegations set out in the present show cause notice also. In both the aforesaid decisions rendered by the Division Bench of this Court reference has been made to a decision of the Hon'ble Supreme Court in the case of State of Gujarat v. Mehbubkhan reported in AIR 1968 S.C. 1468.

7. In the second decision - Kathi Harsur's case (supra) following passage from para. 20 of the citation has been reproduced :-

"The reasoning of the learned Judges that the said allegation should have contained all the particular places of public entertainment, or what particular establishment the respondents were supposed to have visited, is not warranted, by the provisions of sec. 59. In fact, if we may say so, with respect, there is a slight inconsistency in the reasoning of the learned Judges, because, in the latter part of the judgment they say that a party is not entitled to be supplied with particulars of the allegations made against him. We are, therefore not inclined to accept the above reasoning of the Gujarat High Court. The notices, refer to the periods during which the acts are stated to have been committed, as well as the area where they are said to have been committed. No doubt, the expression 'place of public entertainment', is defined in sec. 2(10) of the Act; but the mere fact that the said definition takes in various types of places, does not militate against the allegation No. 1 in Special Criminal Application No. 3 of 1965, or allegation No. 3 in the connected application, being of a general nature of the material allegations as contemplated under sec. 59. Without attempting to be exhaustive, we may state that when a person is stated to be a thief that allegation is vague. Again, when it is said that 'A' stole a watch from X on a particular day and at a particular place the allegation can be said to be particular. Again, when it is stated that 'X' is seen at crowded bus stands and he picks pockets it is of a general nature of a material allegation, Under the last illustration, given above, will come the allegations, which according to the Gujarat High Court, suffer from being too general, or vague. Considering it from the point of view of the party against which an order of externment is proposed to be passed, it must be emphasized that when he has to tender an explanation to a notice, under sec. 59, he can only give an explanation, which can be of a general nature. It may be open to take a defence, of the action being taken, due to malafides, malice or mistaken identity or he may be able to tender proof of his general good conduct, or alibi during the period covered by the notice and the like."

Dealing with the aforesaid decision of the Apex Court,

the Court observed as under :-

"In view of the aforesaid authoritative pronouncement of the Supreme Court, it is obvious that even though notice issued under sec. 59 is to refer to allegations of general nature containing material particulars, atleast such allegations in order to meet the requirement of the law, must indicate the area or locality where such alleged activities were said to have been committed by the proposed externnee and the allegations should also indicate as to within what period, he did it so that his defence about alibi if at all can be reasonably put forward for consideration of the externaling authority."

8. The present case stands on a better footing inasmuch as cases enlisted in the table would clearly indicate that they were registered in the year 1989, 1990, 1992 and 1993. Even they do not indicate any proximity of time between even the year of registration of the particular offence as set out in the table and the date of externment.

9. In the above view of the matter, this petition is required to be allowed. The impugned externment order passed against the petitioner and confirmed by the appellate authority as stated above, is hereby quashed and set aside. Rule made absolute accordingly. D.S.P.

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